

Dubai World and Nakheel – three major developments



By Mark Blanksby and Ben Cowling

In late 2009, Dubai made headlines for all the wrong reasons with the announcement that Dubai World, the owner of Dubai's most-prominent property developer, Nakheel, proposed to restructure debt owed to a range of banks and trade creditors. Although Dubai was not alone in suffering the effects of the Global Financial Crisis, it was nonetheless a dark day for Nakheel – sponsor of the world-famous "Palm" developments – and for the region generally.

In December 2009, the Government of Dubai enacted special legislation (Decree No. 57 of 2009) to support the restructuring of Dubai World (the Decree) and a Special Tribunal was established to oversee the process. The Decree seeks to impose international standards of transparency and fairness to the restructuring process and various distinguished judicial officers have been appointed to the Special Tribunal. The Decree contemplates that a Dubai World company may, if it wishes, issue an application that the Special Tribunal give effect to a voluntary arrangement to bind all of that company's creditors.

Despite this, the last few months have been a period of significant uncertainty for creditors of Dubai World, many of which are large multinational construction companies engaged by Nakheel and other Dubai World companies on major projects. Firstly, the detail of the proposed restructure had not been released. Secondly, given the establishment of the Special Tribunal, the ability of creditors to pursue claims for payment in the meantime was not clear, especially in respect of contracts containing arbitration agreements.

In March 2010, there were three major developments that improved the lot of trade creditors:

- On 17 March, the Dubai Court of First Instance decided that it could not hear a claim brought against Nakheel because Decree 57 prevented the Dubai Courts from hearing such matters. While there is no law of precedent in Dubai and an

appeal is possible, this decision clarified that the Special Tribunal probably has exclusive jurisdiction to hear and decide claims now and in advance of a Dubai World company filing a proposed voluntary arrangement under the Decree. Indeed, at least one creditor has filed such claim with the Special Tribunal since.

- On 25 March, the Government of Dubai announced that an arrangement would be proposed to creditors of Dubai World and Nakheel that was backed by up to US\$9.5 billion of state funding. While details of the proposal will only be revealed to individual creditors in private discussions over the coming weeks, the announcement stated that the Nakheel Restructuring Proposal would feature an offer to trade creditors of "a significant cash payment shortly and a tradable security".
- On 30 March, the Special Tribunal issued Practice Direction No. 1 of 2010 stating that it has a policy "to respect and enforce arbitration agreements made between [Dubai World] and its creditors". The practice direction states further that "the Tribunal expects the parties to continue with pending arbitration proceedings in accordance with their contractual obligations." This suggests that Decree 57 does not override arbitration agreements in contracts with Dubai World companies.

While there remain many obstacles to the resurrection of Dubai World and Nakheel – not the least of which is the possibility that creditors may not support the current restructuring proposal – the month of March has heralded giant leaps forward. Trade creditors can now have much greater confidence in knowing the legal position and what their commercial options are. This can only be positive for Dubai and its future success.

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